

2021 Case Law Update



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EEOC's Fiscal Year 2020 Statistics



- Total discrimination charges
- State-wide statistics
- Total monetary collections

U.S. Supreme Court Decisions

- *Van Buren v. United States*, 141 S.Ct. 1648 (2021).
- **CFAA does not apply to individuals with improper motives so long as otherwise authorized to access the information.**



Gender Discrimination



- *Button v. Dakota, Minnesota & Eastern R.R. Corp.*, (8th Cir. 2020).
- **To constitute direct evidence, statement must be made by the decision maker.**

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Pregnancy Discrimination

- *Konczal v. Zim Tim, LLC*, (E.D. Mich. Apr. 15, 2021).
- **Jury could determine that pregnancy was "at least a motivating factor" for termination.**



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Race/Gender



- *Price v. Wheeler*, (5th Cir. 2020).
- **Employee's own assessment of her performance is irrelevant, no matter how great she thinks she is.**

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Race Discrimination

- *Frith v. Whole Foods Mkt., Inc.*, (D. Mass. Feb. 5, 2021).
- **Discipline related to “Black Lives Matter” masks not discriminatory.**



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Race Discrimination



- *Mandala v. NTT Data, Inc.*, (2d Cir. 2020).
- **Insufficient evidence that policy not to hire individuals with certain criminal convictions had disparate impact on black applicants.**

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National Origin

- *Khalaf v. Ford Motor Co.*, (6th Cir. 2020).
- **Complaints about Middle Eastern employee’s English language skills not evidence of national origin harassment, but it is a “fine line.”**



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Age Discrimination



- *Flowers v. West Rock Services, Inc.*, (6th Cir. 2020).
- **“Cat’s paw” theory not applicable in “failure to hire” context.**

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Disability Discrimination

- *Burnett v. Ocean Properties, Ltd.*, (1st Cir. 2021).
- **Fact employee could enter workplace (but at the risk of bodily injury) and perform essential functions did not excuse employer’s denial of accommodation.**



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Disability Discrimination



- *Colton v. Fehrer Auto., N. Am., LLC*, (11th Cir. 2021).
- **Physical trait, such as height, must be caused by a physiological condition to be considered a “disability.”**

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Disability Discrimination

- *McAllister v. Innovation Ventures, LLC*, (7th Cir. 2020).
- **FMLA certification dooms claim that employee a “qualified individual with a disability.”**



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Disability Discrimination



- *Holmes v. General Dynamics Mission Systems, Inc.*, (4th Cir. 2020).
- **Inability to comply with safety rule = inability to perform essential function.**

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Retaliation

- *Jackson v. Genesee Cnty. Road Comm'n*, (6th Cir. 2021).
- **HR Director performing job duties may be engaged in “protected activity.”**



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Retaliation

- *Couch v. Am. Bottling Co.*, (8th Cir. 2020).
- **Employee's failure to meet new supervisor's new expectations constituted a legitimate, nondiscriminatory reason for discharge.**



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